

# M&A Update

## Senator Levin Introduces Anti-Inversion Act

**May 21, 2014**

On May 20, 2014, Sen. Carl Levin (D-MI) introduced the Stop Corporate Inversions Act of 2014 (the "Levin Bill"), which proposes significantly more stringent limits on the ability of U.S. companies to relocate outside the U.S. The Levin Bill, if enacted, would apply to transactions completed after May 8, 2014 and would sunset after two years, unless reenacted by Congress.

Current tax law treats a foreign company as a U.S. corporation after an acquisition if at least 80% of the foreign company's shares are owned by the U.S. company's shareholders, the foreign company acquires substantially all of the assets of the U.S. company, and the foreign company and its affiliates do not have "substantial business activities" in the foreign company's home jurisdiction. U.S. companies that merge with a foreign company can generally avoid this result if the foreign company's shareholders receive more than 20% of the combined company's stock in the merger.

Under the Levin Bill, the foreign company's shareholders would need to receive at least 50% of the combined company's stock for the foreign company to avoid treatment as a U.S. corporation. In addition, the Levin Bill generally would treat the foreign company as a U.S. corporation if management and control of the company remain primarily in the U.S. and at least 25% of the foreign group's employees, sales or assets are located in the U.S. This broad rule could apply even when a large foreign company acquires a much smaller U.S. company.

The Levin Bill tracks the March 2014 Obama Administration proposal except that the Obama proposal, if enacted, would not apply to transactions closed by December 31, 2014.

Given the lack of Republican support for the Levin Bill, its prospects for enactment are at best uncertain.

\* \* \* \* \*

If you have any questions, please contact any of the following attorneys or your Cadwalader contact:

Linda Swartz	+1 212 504 6062	<a href="mailto:linda.swartz@cwt.com">linda.swartz@cwt.com</a>
Chris Cox	+1 212 504 6888	<a href="mailto:chris.cox@cwt.com">chris.cox@cwt.com</a>